IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.4705 of 2006

Pratibha Subhash Bellubbi ..Petitioner

vs

The State of Maharashtra & ors. ..

Respondents

Mr Amit Sale for the petitioner.
Mr. R.D.Rane, Govt. Pleader, for respondent.No.1
Ms Deepa Chavan with Rajiv Bhatia and Kiran Gandhi i/b Little and Co for respondent Nos. 2 and 3.

with

Writ Petition No.5175 of 2006

Ajay Hanmantray Birajdar and Anr ..Petitioners.

vs

The State of Maharashtra & ors. ..

Respondents

with

Writ Petition No.6184 of 2006

Vijayalakshmi Layappa Pujari & ors. ..Petitioners

vs

The State of Maharashtra & ors. ..

Respondents

Mr A.Y. Sakhare with Mr.A.P. Kulkarni for the petitioner.
Mr. R.D.Rane, Govt. Pleader, for respondent.No.1

Ms Deepa Chavan with Rajiv Bhatia and Kiran Gandhi i/b Little and Co for respondent Nos. 2 and 3.

CORAM: H.S.BEDI, C.J. ,&
V.M.KANADE, J.
DATE: OCTOBER 17, 2006.

P.C.:-

As the facts of all the petitions are somewhat identical, they are being disposed of by this common judgment though for facility the facts are being taken from Writ Petition No.4705 of 2006.

1 The petitioners are students of 10th standard in K.M.High School, Jath. They took the class Xth Examination in March, 2006 but before the declaration of the result, received a communication pointing out that the letters “o.p.t” had been written in the answer sheets for the purpose of revealing their identity to the examiner, which was a use of unfair means that by this action had violated the provisions of rule 11 of the Schedule of Punishment framed under section 19A of the Maharashtra Secondary and Higher Secondary Boards Act, 1965, hereinafter called the “Rules” and further to show cause as to why the punishment of cancellation of their performance in the examination not be ordered with a further restraint for six months to appear for the Xth Class Examination be not

imposed on them. The petitioners submitted their replies to the said show cause notices pointing out that they were meritorious students and had not engaged in any misconduct. They further pointed out that the letters “o.p.t” meant “odi puta tiruviri” i.e. “ turn over after reading” or “please turn over”, in the Kannada language and as such there was no intention whatsoever of attempting to reveal their identity to the examiner.

2. The petitioners were nevertheless by means of a telegram called upon to appear before respondent No.3 for inquiry on the allegations leveled against them. The petitioners did appear before the respondent and yet again offered their explanation. As several other students had also received similar communications the parents and the students of Xth standard Kannada Medium in Jath Taluka gave a representation to the Guardian Minister of Sangli District on 30th April, 2006 requesting for the withdrawal of the show cause notices but on the contrary the results of the petitioners for Xth examination had been cancelled. It is this action of the respondents that has been challenged in these petitions.

3. Reply by way of affidavit has been filed on behalf of the respondents, and it has been pointed out that the Rules for taking action had been scrupulously observed and the fact that the petitioners had admitted that they had written o.p.t. on the answer sheets was clearly contrary to the specific instructions on the answer sheets and rule 11 of the Rules. It was further stated that the only inference that could be drawn from the said marking was that it was for the purpose of revealing their identity to the examiner. It is also pleaded that interference of the court in such matters ought to be minimal and the petitions ought to be dismissed on this ground also.

4. During the course of hearing today the learned counsel for the petitioners have raised two basic issues before us (1) that the marking o.p.t. on the three answer sheets would not fall within the purview of rule 11 and in order to make the rule applicable it was required to be held that there was intention to reveal the identity and as no finding had been recorded in either case the petitioners must succeed and(2) the report of the inquiry officer referred in the reply which had been accepted by the Standing Committee gave no reasons for its making and in the absence of any such reasons the issues which weighed with the inquiry officer were not discernible. It

has also been pleaded that the finding of the inquiry officer merely related to suspicion about the alleged misconduct of the petitioners and there was no categorical finding on this aspect

5. The learned counsel for the respondent- Board, however, placed reliance on the judgment of the Supreme court in the case of Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S. Gandhi and ors, reported in (1991) 2 SCC 716 and Karnataka Public Service Commission vs B M Vijaya Shakar reported in 1992(58) ELT 558 (S.C) and has pointed out that the interference by a court in such matters should be minimal and as the petitioners had accepted the fact that the letters o.p.t. had been written on the answer sheets, no further evidence was required to show their culpability. She has further contended that if this Court were to come to the conclusion that the proceedings were vitiated, it would be appropriate to remit the case for fresh decision to the authority concerned.

6. We have considered the arguments advanced by the counsel. The facts as mentioned above are not really disputed and the arguments therefore flow from an interpretation of the

Rules and their applicability to the facts of the case. A perusal of the Rules 4 and 5 reveal that after an inquiry about the use of unfair means has been entrusted to the inquiry officer he shall give a notice in writing to the candidate and/or members of the staff concerned setting out therein the nature of the misconduct and calling upon him/her to show cause within the time stipulated as to why penalty as provided in Rule 14 should not be imposed and also calling for the production of any documents which the candidates wishes to rely on. Rule 6 authorises a candidate to submit the reply in writing to the show cause notice, and to produce witnesses as well as documentary evidence and to be heard in person if he so desires. Rules 10 to 12 being extremely relevant are reproduced hereinbelow:

> “10. After considering the facts of the case the inquiry officer shall submit its report in writing including its findings and proposals for punishment if any,within 6 weeks from the date of issue of the show cause notice to the Divisional Chairman of the Divisional Board for further action.

11.The Standing Committee shall consider the report and decide the case as it may deem fit. The Standing Committee will take the decision in the same meeting.

12. The Standing Committee shall not be bound to give detailed reason in support of its order of decision but shall record its reasons if it disagees with the findings or recommendations of the inquiry and under such in circumstances the Standing Committee need not give hearing to the delinquent concerned".

7. Rule 10 states that after considering the facts of the case the inquiry officer shall submit its report in writing including its finding and proposals for punishment if any, within six weeks from the date of issue of the show cause notice to the Divisional Chairman of the Divisional Board for further action. Rule 11 directs that the Standing Committee shall consider the report and decide the case as it may deem fit and that too in the same meeting. Rule 12 states that the Standing Committee shall not be bound to give detailed reasons in support of it's order or decision but shall record its reasons only if it disagrees with the findings or recommendations of

the inquiry officer though the Standing Committee need not give hearing to the candidate concerned.

8. It is true, as contended, that the court's interference in such matters should be minimal, but, equally, an obligation rests on the Board to follow its own Rules not only in letter but, more importantly, in spirit. The question in the present case is whether it can be said that this has been done . We have gone through the findings recorded by the inquiry officer which are in Marathi and when translated into English read as under:

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"The student has answered Science II in Kannada. In the answer sheets she has mentioned o.p.t. on every page on the backside and she has stated in her reply that she has done this as is her usual practice. No material can be attributed to the letters o.p.t. It appears she has deliberately did this symbol and this appears to be suspicious. It further appears that the intention may be to use unfair means. The student, therefore, is liable to be punished".

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"students appear to be guilty".

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"the student has admitted that he has made this circular sign with pencil and this is contrary to rule 11 and therefore he is liable to be punished".

9. A perusal of the aforesaid findings clearly shows that they do not fall within the para-meters set by the Rules. It would be seen that rule 10 talks about consideration of the facts of the case at the instance of the inquiry officer. Rule 11 visualize a similar consideration of the report at the hands of the Standing Committee. The use of the words "consideration" used time and again emphasizes that some reasons have to be recorded for the conclusions that are sought to be drawn by the inquiry officer. This becomes even more imperative under rule 12 which imposes no obligation on the Standing Committee to give detailed reasons if it supports the decision of the inquiry officer and reasons are required to be recorded if it disagrees with the findings or recommendations of the inquiry. This procedure casts a greater obligation on the inquiry officer to examine the matter

and to submit a report giving some cogent reasons for the conclusions drawn. To our mind no reason whatsoever is discernible in the reports and even the cryptic findings so recorded speak largely about “suspicion” of misconduct. It is true that the use of unfair means is a malaise which needs to be curbed with a heavy hand, but equally, such case need to be examined with reasonable care as a finding of misconduct can jeopardise the life and career of a young student beyond repair.

10. The learned counsel for the respondents has drawn our attention to paragraph 22 of the judgment in the case of Maharashtra State Board of Secondary and Higher Secondary Education (supra) to contend that if the facts are not disputed, the inquiry officer was not obliged to conduct any further inquiry and as petitioners before us had admitted the factum of the unusual markings on the answer sheets, only the conclusions were required to be recorded and as such no interference was called for. We disagree with this very broad submission, which accepted would leave virtually no defence to a student. We find that in paragraph 37 of the cited case it was observed that a case of unfair means was to be judged on its own individual facts and no universal yard

stick could be applied beyond giving a reasonable opportunity to a candidate to make his defence, and that the standard of proof was not to be beyond reasonable doubt but relating to the preponderance of probabilities. In that case concededly the marks shown in the answer sheets did not tally with the marks in the marksheet prepared by the examiners, and in the facts the Supreme Court observed that the only inference that could be drawn was that the students had been instrumental in showing an increase in the marks as they were to be its beneficiaries and as the fabrication had been admitted, the inquiry officer was not required to give elaborate reasons for his decision. The facts of the present case are radically different. There is no admission on the part of the students that they had made any markings with an intention of revealing their identity to the examiner and there is no evidence whatsoever to show that in consequence of their revealing their identity they had been able to secure marks higher than their performance in the examination warranted.

11. It has next been argued by the learned counsel for the respondents that even assuming that a flaw did exist in the proceedings before the inquiry officer and in his recommendation, in the facts and circumstances of the case it

would be appropriate to remit the matter for a fresh inquiry and decision. We find no justification in this plea. Concededly the examination held in August 2006 vis-a-vis the petitioners, has been cancelled and they have been debarred from appearing in the examination to be held in October, 2006. We find, therefore that the success in these petitions will not help them beyond a point as they have already lost one year. We therefore reject this submission of the learned counsel for the respondents. It has finally been submitted that three weeks time may be granted to the respondents to enable them to approach the Supreme Court. We find no justification in allowing this prayer for the reason given hereinabove and further as our decision is based on the aforementioned decisions of the Hon'ble Supreme Court itself.

12. In the result all the petitions succeed and are accordingly allowed with no order as to costs. We accordingly quash and set aside all the three order dated 26th June, 2006 and direct respondent No. 3 Divisional Secretary, Kolhapur Division to declare the results and issue mark sheets to the petitioners for Xth Standard examination.

CHIEF JUSTICE

V.M.KANADE, J.